STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-00XX
TELEPHONE (916) 327-2455
FAX (916) 323-3387
www.boe.ca.gov

January 12, 2000

Re: Applicability of Revenue & Taxation Code section 214(g)(1) to Limited Liability Companies

Dear Mr. ,

This letter is in response to a letter you addressed to the Franchise Tax Board on April 7, 1999, which they in turn forwarded to the Property Tax Section of the Legal Division of the Board of Equalization, the agency that administers Revenue & Taxation Code section 214.

You stated that you represent a nonprofit public benefit corporation providing services to Asian American seniors. Your client wishes to form a business entity for purposes of acquiring, developing, and operating a parcel of real property for the housing and care of senior citizens. You question whether the provision in section 214, subdivision (g)(1) which allows a property tax exemption for property owned and operated by "a **limited partnership** in which the managing general partner is an eligible nonprofit corporation" can be applied to include property owned and operated by "a **limited liability company** in which a managing member is an eligible nonprofit corporation." You note that the availability of limited liability for all members, including managers, of a limited liability company (LLC) makes it a more attractive vehicle for development by a nonprofit than a limited partnership, in which the general partner bears unlimited liability.

The short answer to your question is no; property owned by an LLC -- even one with a "qualifying managing member" -- is not eligible for the welfare exemption. In section 214, subdivision (g), the legislature has provided for only one type of for-profit business entity to own and operate rental housing and related facilities and obtain the exemption therefor – namely, a limited partnership with a qualified nonprofit corporation as the sole managing general partner. Despite subsequent changes in partnership law and omnibus bills adding LLC's to statutes applicable to corporations and partnerships, the legislature has not added LLC's to section 214, subdivision (g)(1). Even the recently enacted amendments to section 214, subdivision (g), AB 1559, left the partnership language in place.

Constitutional and statutory provisions granting exemptions from taxation are to be strictly construed, and, and in administering the statute, we cannot extend its application beyond the plain language of the section. (*Cypress Lawn C. Assn. v. San Francisco* (1931) 211 Cal. 387, 390; *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23, 27.)

Although we appreciate the difficulty encountered by non-profits that desire to engage in development of real estate and housing enterprises while protecting their directors and assets, only the legislature can expand the 214, subdivision (g) provision to include LLC's.

The welfare exemption requires an annual filing by the claimant with annual review by this Board and the county assessor. Until such time as the claim for exemption and all supporting documents are filed and reviewed by the Board's staff, we cannot make a final determination on the merits of an exemption claim. However, it is clear that the Board of Equalization is not authorized to expand the legislature's specific provision in section 214, subdivision (g) limiting rental property ownership to a limited partnership with a qualifying managing general partner.

If you have any further questions on this issue, feel free to call me at (916) 327-2455.

Sincerely,

/s/ Susan Scott

Susan Scott
Tax Counsel

SAS:lg
property/precdent/welexqal/00/03sas

Cc:

Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Pete Gaffney, MIC:64
Mr. Larry Augusta, MIC:82